

**Recorded at the request of and mail to:**

**City of Long Beach  
Attn: Michael J. Mais, Asst. City Attorney  
333 W. Ocean Blvd., 11<sup>th</sup> Floor  
Long Beach, CA 90802**

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**FREE RECORDING REQUESTED IN ACCORDANCE  
WITH GOVERNMENT CODE §6103**

Space above this line for Recorder's Use

### **AIRSPACE AND AVIGATION EASEMENT**

By its duly authorized execution of this document, McDonnell Douglas Corporation, a Maryland corporation and a wholly-owned subsidiary of The Boeing Company, a Delaware corporation ("Grantor"), grants to the City of Long Beach, a charter city and municipal corporation of the State of California ("Grantee" or "the City"), an airspace and avigation easement over and to that certain property owned by Grantor and located adjacent to Long Beach Airport- Daugherty Field, commonly known as Douglas Park, and more specifically described in the legal description attached and incorporated into this grant of easement as "Attachment A" ("the Property"). This airspace and avigation easement is granted in perpetuity to the City (and its successors) in its capacity as the owner, operator and proprietor of that certain property commonly known as Long Beach Airport-Daugherty Field ("LGB") as is more specifically depicted on the map attached and incorporated into this grant of easement as "Attachment B". This grant of easement is executed, delivered and effective as of \_\_\_\_\_, 2004.

This easement, as defined and described in Section 2 of this document, is granted for good and valuable consideration, and is made and accepted in further consideration of the recitals, representations and warranties in Section 1 of this document.

#### **1.0 Recitals, Representations and Warranties**

##### **1.1 Grantor's Ownership.**

As of the effective date of this grant of easement, Grantor is the legal owner in fee of the Property.

**1.2 Grantee's Ownership of Long Beach Municipal Airport.**

Grantee owns and operates LGB as a public airport.

**1.3 Grantor's Development of the Property.**

Grantor desires to develop the Property and to receive necessary permits and authorization for such development from the City. In connection and concurrently with execution and acceptance of this grant of easement, City has approved and Grantor and the City have executed a Development Agreement governing the development of the Property.

**1.4 Grantor's Authority to Grant Easement.**

Grantor has been duly and lawfully authorized by its Board of Directors to execute this grant of easement in favor of the City.

**1.5 Grantee's Authority to Accept Easement.**

Grantee has been duly and lawfully authorized by its City Council to accept this grant of easement.

**1.6 Present and Future Effects of the Operation of LGB as  
a Public Airport on the Development and Use of the Property.**

As a result of the present or future operation of aircraft to and from LGB, the Property is regularly subject to operation of aircraft on LGB property, and flight by aircraft over or in the vicinity of the Property of such a nature, and in such volume, that persons residing within, or otherwise lawfully using or occupying the Property, or any portion of the Property, may experience various resulting effects, including, but not limited to, noise, dust particulates, fumes or other effects to a degree sufficient to cause inconvenience, annoyance, discomfort, emotional or physical distress or injury, interference with the comfortable use and enjoyment of the Property for its intended or permitted purpose, or diminution in the value the Property. The nature and level of aircraft operations to, from and on LGB may increase in the future, and may cause a

resulting increase in adverse effects to the Property, its value, and persons residing on or otherwise lawfully using or occupying the Property.

**1.7 Protection of Legal Rights and Interests Existing  
in Respect of the Operation of LGB as Public Airport.**

In connection with its desired development of the Property, and in consideration of the City's agreement to enter into a Development Agreement for the Property, Grantor, for itself and the "Grantor Parties" defined in Section 3.1 of this grant of easement, wishes to provide appropriate protections for the legal rights and interests of the City, users of LGB, and the public with respect to the continued operation and use of LGB as a public airport.

**2.0 Grant and Terms of Airspace and Avigation Easement.**

Grantor, for itself and the Grantor Parties, grants a perpetual and nonexclusive airspace and avigation easement (the "easement") over and to the Property to the City, as described below. This easement is granted for the benefit of the City and the "Grantee Related Parties" defined in Section 3.1 of this grant of easement.

**2.1 Right to use Airspace Above the Property.**

Grantee, and all persons using LGB, shall have the unimpeded and unrestricted right to use and operate aircraft through all of the "navigable airspace" above the Property, as that term is presently defined in the Federal Aviation Act of 1958, as amended, and in all airspace above the Property necessary or convenient to the present or future operation of aircraft to and from LGB in accordance with all relevant regulations, advisory circulars or other publications of the Federal Aviation Administration governing the operation of aircraft in flight.

Grantor will not erect or permit the erection of, or permit to remain upon the Property, any building, structure, improvement, tree, vegetation or other object extending into the airspace above the Property that may, in Grantee's sole and exclusive judgment, cause interference with aircraft navigation or operations at LGB.

Grantee shall have the unrestricted right, in its sole and exclusive discretion and without liability to Grantee of any kind, to take such actions as it deems necessary, including the unrestricted right of ingress and egress on the Property, subject to the notice provisions set forth in Section 2.2, below, to prevent, prohibit, remove, demolish in whole or in part, or install any lighting or marking on, any: (i) building, (ii) portion(s) of buildings, (iii) structures or improvements of any kind, (iv) tree, (v) vegetation or (vi) any other object on the Property or any portion thereof, which causes any interference with, or impairment of, the safe, efficient, free and unrestricted use of the airspace by aircraft operating to or from LGB, or which is in any respect inconsistent with then existing federal law or regulations which define the airspace necessary or convenient to the safe and efficient operation of aircraft to and from LGB. However, in the event any structure is constructed on the Property which, at the time of its construction, has received necessary and required City permits for construction, and which has received a written determination from the Federal Aviation Administration ("FAA"), in accordance and consistent with the requirements of Part 77 of the Federal Aviation Regulations (or equivalent successor regulations), that the structure is neither an "obstruction" nor a "hazard" to air navigation, such structure shall be deemed to be in compliance with the requirements of this grant of easement, and it shall not be subject to any action to demolish or remove the structure, in whole or in part, under the terms of this grant of easement.

The cost to install lighting or markings on, or to remove or demolish, in whole or in part, any such building or portion of building, structure, improvement, tree, vegetation or other object shall be borne exclusively by Grantor or the Grantor Parties.

## **2.2 Prohibition Against Activities Which Cause Electronic or Light Interference with Operations at, or the use of, LGB.**

Grantor shall not use the Property for, or permit the use on the Property of, any activity which creates electrical interference with radio communication between any installation on or user of LGB and aircraft operating to, from or in the vicinity of LGB. Grantor will not install, use or permit the use of lights on the Property which interfere

with or impair the unrestricted operation of LGB or the visibility of LGB to users of the airport, or which make it difficult for aircraft operators or pilots to distinguish between airport lights and other lights. Grantor will not cause or permit a discharge on or from the Property of fumes, dust or smoke which impairs visibility in the vicinity of LGB or otherwise endangers the landing, taking off or maneuvering of aircraft, or otherwise impairs the usability or function of LGB as an airport.

Grantee shall have the unrestricted right in its sole and exclusive discretion, and without liability to Grantor of any kind, to take such actions as are necessary, including the unrestricted right of ingress and egress to prevent, prohibit, remove, or otherwise terminate any improvement or activity on the Property which is inconsistent with or in violation of the rights and prohibitions of this Section; provided, however, that Grantee shall provide Grantor (or any subsequent owner of the portion of the Property over which Grantee wishes to exercise such right of ingress and egress) a minimum of ten (10) days notice prior to exercising such right of ingress and egress.

The cost to prevent, prohibit remove, or otherwise terminate any such improvement or activity on the Property shall be borne exclusively by Grantor or the Grantor Parties.

### **2.3 Right to Impose on the Property Noise, Fumes and Other Consequential Effects of Aircraft Operation, and the Operation of LGB as a Public Airport.**

For, as a result of, or in connection with any and all air navigation, airport operations, aircraft ground operations, maintenance, or any other purpose directly or indirectly related to aviation activities at, to or from LGB, or its use as a public airport, including aircraft landing, taking off, taxiing, aviation or related facility operations at or on LGB, Grantee and the Grantee Related Parties shall have the right to subject the Property to any and all effects or conditions of any nature, and at any level or volume, resulting from the operation of LGB as an aviation facility, or the operation of any aircraft using LGB, except as expressly provided in Section 2.5, below.

This easement right includes, but is not limited to, the right to cause on or over the Property, or in any structure or improvement on the Property, noise, sounds, vibrations,

turbulence, illumination, air currents, electronic interference, fumes, dust, other particulate matter, or fuel particles resulting from the operation of aircraft or the operation of LGB as an aviation facility, and any and all resulting annoyance, inconvenience, disturbance or other consequences to persons on, in or using the Property, and any improvements on the Property, as they may now or hereafter exist. This easement right further includes the right to cause interference with sleep, communication, recreation or other use or enjoyment of the Property, and any and all other effects that might otherwise be alleged to be incident to or caused by the operation of LGB, or the operation of aircraft over or in the vicinity of the Property, or in landing at or taking off from, or operating at or on LGB, including, but not limited to, those effects that (i) may be objectionable or would otherwise constitute a trespass on the Property, or into airspace above or in the vicinity of the Property, (ii) may cause a permanent or continuing nuisance with respect to the Property or its use, (iii) may cause any emotional or other distress or injury to any person, or (iv) may cause or result in any taking of or damage to the Property, any portion of the Property, or any improvements on or to the Property.

#### **2.4 Continuing and Future Easement Rights and Waiver of Claims.**

This easement shall continue in perpetuity notwithstanding any future changes or increases in the type, volume, frequency, time, or location of operations to, from or at LGB; nor shall any such changes constitute or be deemed to be a “burden” or “surcharge” on the easement. No conduct or use of the Property by Grantor or any Grantor Party for any period of time shall be construed to establish prescriptive rights in Grantor or any such Grantor Party; nor shall any increase, diminution or change in the use of the easement, or the operation or use of LGB by Grantee, constitute an “overburdening,” termination or abandonment of the easement, in whole or in part.

Except as provided in Section 2.5, Grantor and each of the Grantor Parties waive any right, or claim of right, for damages or otherwise, against Grantee, and all Grantee Related Parties (as defined in Section 3.1), for any act or activity undertaken consistent with the rights granted in, or permitted by, this grant of easement.

## **2.5 Exception for Aircraft Crash or Falling Objects.**

This easement, and the resulting waiver of Grantor's rights, shall not be deemed to limit the liability of any aircraft operator for direct physical injury or damage to persons, structures or improvements on the property directly resulting from: (i) an aircraft crash onto the Property; (ii) the impact of falling objects from, or parts of, any aircraft onto the Property; or (iii) the discharges of waste or the non-routine or non-customary discharges of fluids or fuel from any aircraft.

## **3.0 General Provisions.**

### **3.1 Persons Bound by Easement**

This easement shall be appurtenant to and for the benefit of LGB, including any additions thereto, wherever located, and for the benefit of Grantee and Grantee's successors, assigns, tenants, permittees, licensees, concessionaires, guests, and invitees, including, but not limited to, any and all persons, firms, or entities lawfully on, using or operating aircraft to, from or at LGB ("Grantee Related Parties"). This easement, and all resulting rights, is forever vested in Grantee, its successors and assigns. The obligations created, and privileges and rights granted, by this easement shall be binding upon the Property (and each portion thereof) and all Grantor Parties. For purposes of this easement, "Grantor Party" or "Grantor Parties" means, collectively: (i) Grantor and its affiliates, successors and assigns; (ii) all subsequent owners of a fee interest in any portion of the Property and their respective heirs, administrators, executors, representatives, successors and assigns; and (iii) all persons and entities from time to time on, using and/or occupying any portion of the Property, either as an owner, tenant, licensee, invitee, permittee, concessionaire, employee, visitor, guest or otherwise.

### **3.2 Modification or Termination of Easement.**

This easement may not be modified, amended, terminated or abandoned except by execution and delivery of an instrument executed and acknowledged by Grantee, its successors or assigns.

### **3.3 Severability.**

In the event that any one or more covenant, condition, right or other provision contained in this easement is held to be unenforceable, invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this easement and such a determination shall in no way affect, impair, or invalidate any other covenant, condition, right or other provision of this easement.

#### **GRANTOR**

McDonnell Douglas Corporation, a Maryland Corporation

Dated:\_\_\_\_\_ By:\_\_\_\_\_

Its:

#04-02269



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the real property conveyed by the foregoing Airspace And Avigation Easement dated \_\_\_\_\_, from the **MCDONNELL DOUGLAS CORPORATION**, a Delaware corporation, to the **CITY OF LONG BEACH**, a charter city and municipal corporation of the State of California, is hereby accepted pursuant to order of the City Council of the City of Long Beach made on \_\_\_\_\_, and that the Grantee consents to recordation thereof by its duly authorized officer, namely, the City Attorney.

DATED: \_\_\_\_\_

ROBERT E. SHANNON, City Attorney of the City of Long Beach

By: \_\_\_\_\_

Michael J. Mais  
Assistant City Attorney

STATE OF CALIFORNIA       )  
  )       SS.  
COUNTY OF                     )

On \_\_\_\_\_, 2004 before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

**ATTACHMENT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**ATTACHMENT B**  
**LEGAL DESCRIPTION OF LONG BEACH MUNICIPAL AIRPORT**